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HOUSE BILL 687

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY
Joseph Cervantes

AN ACT

REQUIRING THE DISCLOSURE OF A DONOR'S IDENTITY AND FINANCIAL INTEREST WHEN A DONOR HAS A BUSINESS RELATIONSHIP WITH A STATE AGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-5A-1 NMSA 1978 (being Laws 1992, Chapter 27, Section 1) is amended to read:

"6-5A-1. DEFINITIONS--REQUIREMENTS FOR GOVERNMENTAL ENTITIES THAT RECEIVE FUNDS OR PROPERTY FROM CERTAIN ORGANIZATIONS.--

A. As used in this section:

(1) "agency" means any state agency, department or board, any public institution of higher education or public post-secondary educational institution and any county, municipality or public school district;

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1 (2) "organization" means an organization that
2 has been granted exemption from the federal income tax by the
3 United States commissioner of internal revenue as an
4 organization described in Section 501(c) of the Internal
5 Revenue Code of 1986, as amended or renumbered, and whose
6 principal and authorized purpose is to complement, contribute
7 to and support or aid the function of or forward the purposes
8 of a single agency through financial support [~~the~~] or
9 contribution of services, goods, data or information that help
10 or aid the agency in carrying out its statutory purpose and
11 goals, including, but not limited to, the provision of
12 scholarships to students of educational institutions and the
13 provision of grants to supplement ongoing research or to
14 provide funds for research and programs being carried out by an
15 agency;

16 (3) "post-secondary educational institution"
17 means an educational institution designated in Article 12,
18 Section 11 of the constitution of New Mexico and any post-
19 secondary educational institution, [~~which term includes but is~~
20 ~~not limited to~~] including an academic, vocational, technical,
21 business, professional or other school, college or university
22 or other organization or person offering or purporting to offer
23 courses, instruction, training or education through
24 correspondence or in person to any individual within this state
25 over the compulsory school attendance age, if that post-

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1 secondary educational institution is directly supported in
2 whole or in part by state or local taxation; and

3 (4) "transferred" means given or otherwise
4 transferred, with or without consideration.

5 B. Prior to an agency accepting property or funds
6 that have been transferred to an agency by an organization, the
7 agency and the organization shall enter into a written
8 agreement that includes at least the following:

9 (1) a concise statement of the organization's
10 purpose and of how that purpose is supportive of the agency's
11 statutory responsibilities and authority;

12 (2) provisions explicitly describing the
13 relationship of the agency to the organization in connection
14 with such issues as authority, autonomy and information sharing
15 and reporting;

16 (3) provisions defining the extent to which
17 the organization may complement and support functions that are
18 the statutory responsibility of the agency;

19 (4) requirements that the organization:

20 (a) if its gross annual income exceeds
21 one hundred thousand dollars (\$100,000), have a financial
22 accounting system considered adequate under customarily and
23 currently accepted accounting standards and that the financial
24 affairs of the organization be audited annually in accordance
25 with generally accepted governmental auditing standards by an

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1 independent professional auditor who would be required to
2 furnish to the agency copies of [~~his~~] the annual audit, which,
3 exclusive of any lists of donors or donations, except as
4 provided in Subsection D of this section, shall be a public
5 record, and to make the associated working papers available to
6 the agency for review upon its written request for a period of
7 three years after the audit report date; or

8 (b) if its gross annual income is one
9 hundred thousand dollars (\$100,000) or less, file a statement
10 with the agency in the form of a balance sheet showing the
11 assets of the organization, its liabilities, its income,
12 classified by general source, and its expenditures, classified
13 by object;

14 (5) a provision requiring that any funds or
15 property transferred to [~~an~~] the agency by [~~an~~] the
16 organization be considered subject to all state laws and
17 regulations governing the disbursement and administration of
18 public funds and public property, except to the extent of any
19 specific conditions of the transfer that are acceptable to the
20 agency and do not require actions that are punishable as crimes
21 under state law;

22 (6) a provision stating that the agency has
23 reviewed the bylaws of the organization and found them
24 acceptable and a provision requiring that the organization
25 furnish copies of the bylaws to the agency;

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1 (7) a provision requiring specification of the
2 consideration that the agency received from the organization
3 for any agency services provided in support of the
4 organization; and

5 (8) a provision requiring the application by
6 the organization of the standard described in Section 6-8-10
7 NMSA 1978 as the standard for evaluating investments of the
8 organization.

9 C. The written agreement required by Subsection B
10 of this section is not required for each transfer but is a
11 precondition of an agency's acceptance of any transfers. The
12 agreement may be amended by mutual written agreement of the
13 agency and the organization.

14 D. Nothing in this section subjects an organization
15 to the provisions of the Open Meetings Act or makes its
16 records, other than the annual audit required under this
17 section, public records within the purview of [~~Sections 14-2-1~~
18 ~~through 14-2-3 NMSA 1978~~] the Inspection of Public Records Act,
19 except that the identity and financial interest of a donor to
20 an organization is a public record if the donor is doing, has
21 done or seeks to do business with the agency that the
22 organization supports, including a sale, purchase, lease or
23 contract, and the donor's identity shall be disclosed to the
24 agency pursuant to Subsection E of this section.

25 E. If a donor to an organization is doing, has done

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1 or seeks to do business with the agency that the organization
2 supports, the donor shall disclose in writing the donor's
3 identity and financial interest. The agency shall maintain a
4 record of the written disclosures."

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